

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NEIL ZLOZOWER and BARRY LEVINE,

Plaintiffs,

v.

MOTLEY CRUE, INC., MOTLEY CRUE
TOURING, INC., LIVE NATION
WORLDWIDE, INC., LIVE NATION
CONCERTS, INC., LIVE NATION
ENTERTAINMENT, INC., LIVE NATION
MERCHANDISE, INC., GLOBAL
MERCHANDISING SERVICES INC.,
GLOBAL MERCHANDISING SERVICES
LTD., HOT TOPIC, INC., INFINITY 1 INC.,
SPENCER GIFTS LLC, ROCK.COM, INC.,
JET.COM, INC., SEARS HOLDINGS
CORPORATION, AMAZON.COM, INC., TSC
APPAREL, LLC, FRUIT OF THE LOOM,
INC., GILDAN APPAREL USA INC., PEACE
TEXTILE AMERICA, INC., FANTASY
ACTIVEWEAR, INC., DELTA APPAREL,
INC., and SCORPIO POSTERS, INC.,

Defendants.

MÖTLEY CRÜE, INC.,

Counterclaimant,

v.

NEIL ZLOZOWER and BARRY LEVINE,

Counterdefendants.

Civil Action No. 1:16-cv-06950-LTS-SDA

**JOINT STIPULATION REGARDING
DISMISSALS OF CERTAIN CLAIMS,
COUNTERCLAIMS, DEFENSES AND
REMEDIES**

Ctrm.: 12D

Action Filed:

Trial Date:

September 6, 2016

None Set

**JOINT STIPULATION REGARDING DISMISSALS OF CERTAIN CLAIMS,
COUNTERCLAIMS, DEFENSES AND REMEDIES**

Plaintiffs Neil Zlozower (“Zlozower”) and Barry Levine (“Levine”) (together, “Plaintiffs”), on the one hand, and Defendants Mötley Crüe, Inc. (“MCI”), Mötley Crüe Touring, Inc., Global Merchandising Services, Ltd., Global Merchandising Services, Inc., Live Nation Entertainment, Inc., Live Nation Worldwide, Inc., Live Nation Concerts, Inc., Live Nation Merchandise, Inc., Sears Holdings Corporation, Spencer Gifts, LLC, Scorpio Posters, Inc., Hot Topic, Inc., Infinity 1, Inc. and Rock.com, Inc. (together, “Defendants”) and Defendant Jet.com, Inc. (“Jet”), on the other hand, hereby agree, through their undersigned counsel, as follows:

WHEREAS Plaintiffs filed a Complaint against Defendants, Jet and other defendants on or about September 6, 2016, in the United States District Court, Southern District of New York, entitled *Zlozower, et al. v. Motley Crue, Inc., et al.*, Case No. 1:16-cv-06940-LTS-SDA (the “Lawsuit”);

WHEREAS Plaintiffs alleged two causes of action in their Complaint against all Defendants, Jet and other defendants, with the First Cause of Action for copyright infringement in violation of 17 U.S.C. §§ 106, 501 and the Second Cause of Action for removal of copyright management information in violation of 17 U.S.C. § 1202;

WHEREAS Plaintiffs alleged in the Complaint that they are entitled to statutory damages and attorneys’ fees pursuant to 17 U.S.C. §§ 504, 505, among other remedies;

WHEREAS Defendants and Jet deny liability and have asserted affirmative defenses in Answers filed with the Court in the Lawsuit;

WHEREAS Plaintiffs have dismissed their claims against the other defendants without prejudice;

WHEREAS MCI, in addition to its denial of liability and assertion of affirmative defenses, has asserted three counterclaims, with the First Counterclaim for trademark infringement against Plaintiffs, the Second Counterclaim for violation of California's right of publicity law against Plaintiffs, and the Third Counterclaim for violation of California's right of publicity law against Zlozower;

WHEREAS Plaintiffs deny liability on MCI's counterclaims and have asserted affirmative defenses;

WHEREAS, pursuant to the Pre-Trial Scheduling Order in the Lawsuit, fact discovery closed on October 26, 2017 and the deadline to file dispositive motions was January 12, 2018;

WHEREAS the Court granted Plaintiffs' request to extend the dispositive motion deadline by two weeks and issued a minute order to that effect;

WHEREAS Plaintiffs and Defendants have met and conferred regarding dispositive motion practice;

WHEREAS, as a result of those meet and confer efforts, Plaintiffs have agreed to dismiss their Second Cause of Action with prejudice with the parties to bear their own costs and attorneys' fees regarding the prosecution and defense of that claim only;

WHEREAS, as a further result of those meet and confer efforts, Levine has agreed to dismiss his claims for statutory damages and attorneys' fees pursuant to 17 U.S.C. §§ 504, 505 with prejudice with the parties to bear their own costs and attorneys' fees regarding those remedies only;

WHEREAS, as a further result of those meet and confer efforts, MCI has agreed to dismiss its First and Second Counterclaims with prejudice with the parties to bear their own costs and attorneys' fees regarding the prosecution of defense of those counterclaims only;

WHEREAS, as a further result of those meet and confer efforts, Defendants have agreed to dismiss their affirmative defense of fair use with prejudice with the parties to bear their own costs and attorneys' fees regarding that defense only; and

WHEREAS Plaintiffs authorize Defendants to file this Stipulation with the Court in accordance with Federal Rule of Civil Procedure 41(a).

THEREFORE Plaintiffs and Defendants, by and through their undersigned counsel, hereby stipulate:

1. Plaintiffs agree to dismiss their Second Cause of Action with prejudice with the parties to bear their own costs and attorneys' fees regarding that claim only;

2. Levine agrees to dismiss his claims for statutory damages and attorneys' fees pursuant to 17 U.S.C. §§ 504, 505 with prejudice with the parties to bear their own costs and attorneys' fees regarding those remedies only;

3. MCI agrees to dismiss its First and Second Counterclaims with prejudice with the parties to bear their own costs and attorneys' fees regarding the prosecution of defense of those counterclaims only; and

4. Defendants have agreed to dismiss their affirmative defense of fair use with prejudice with the parties to bear their own costs and attorneys' fees regarding that defense only.

IT IS SO AGREED.

DATED: January __, 2018

LIEBOWITZ LAW FIRM, PLLC

By:



Richard Liebowitz

Attorneys for Plaintiffs Neil Zlozower and Barry Levine

Dated: Los Angeles, California
January 24, 2018
25

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Attorneys for Defendants

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and Counterclaimant MÖTLEY CRÜE, INC.

DATED: January 24, 2018

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By: 

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Attorneys for Defendant Jet.Com